

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES ALBERT SMITH,

Defendant-Appellant.

UNPUBLISHED
October 22, 1999

No. 199809
Washtenaw Circuit Court
LC Nos. 95 003563 FH
95 004623 FH

Before: O’Connell, P.J., and Talbot and Zahra, JJ.

PER CURIAM.

Defendant was convicted of two separate charges of aggravated stalking in violation of MCL 750.411i; MSA 28.643. Defendant appeals as of right from his consecutive sentence of 3 1/3 to 5 years’ imprisonment. We affirm.

The sole issue on appeal is the propriety of defendant’s sentences. We review a criminal defendant’s sentence for an abuse of discretion. *People v Milbourn*, 435 Mich 630, 635; 461 NW2d 1 (1991). A trial court abuses its discretion when it violates the principal of proportionality. *Id.* We conclude that the sentences the trial court imposed in this case are proportionate to both the offense and the offender.

We reject defendant’s argument that the trial court was required to sentence defendant consistent with the sentences imposed upon persons who have been convicted of similar crimes. This is not the law. When it adopted the proportionality standard of review, our Supreme Court expressed its ‘hope and belief that the proportionality test [would] have the . . . incidental effect of fostering ‘sentencing equity,’ i.e., that it will provide better protection against unjustified sentence disparity between similarly situated offenders[.]’ *Id.*, 636. It did not, however, hold that the trial court must consider, in any way, the sentences of similarly situated offenders. Indeed, it noted that

sentence “disparity” and “equity” refer to the relationship of sentences of similarly situated offenders, whereas “proportionate” and “disproportionate” refer to the relationship of an individual sentence to the seriousness of the matter for which it was imposed. [*Id.* n 2.]

Furthermore, we find that defendant repeatedly demonstrated an absolute unwillingness to conform his conduct to the requirements of the law. He repeatedly contacted his victim despite being ordered not to do so. Defendant was initially convicted of misdemeanor stalking on October 11, 1994. Thereafter, defendant contacted his victim at least once in December 1994, twice in January 1995, once in February 1995, once in July 1995, twice in November 1995, once in December 1995, once the month before defendant's trial, and once the week before trial. At least eight of these contacts occurred after defendant was in jail awaiting trial. At least two of defendant's contacts occurred after the prosecutor charged defendant with a third count of aggravated stalking. Moreover, defendant equivocated on whether he planned to contact his victim after his trial. Defendant testified,

Q. [Prosecutor] Haven't [you] got the message yet that she doesn't want you to contact her?

A. [Defendant] Lots of people telling me that.

Q. Is that a yes or no?

A. *Until the woman tells me that, that's a no.*

In his allocution, defendant wrote, "I will not contact her." He hastened to add, however, "I feel that God will totally restore our relationship". Accordingly, the trial court did not abuse its discretion when it sentenced defendant to consecutive terms of 3 1/3 to 5 years' imprisonment for aggravated stalking.

Affirmed.

/s/ Peter D. O'Connell

/s/ Michael J. Talbot

/s/ Brian K. Zahra